

1 Except as specifically waived in this Decree, Settling Defen-  
2 dants reserve all defenses to any such enforcement action by EPA.  
3 Notwithstanding compliance with the terms of this Consent Decree,  
4 including completion of the Work, Lockheed is not released from  
5 liability for any matters other than Covered Matters and Weber  
6 and the City are not released from liability for any matters  
7 other than Covered Matters and the tasks described in Subpart B  
8 of Section VII (Work To Be Performed).

9 B. Subject to the dispute resolution provisions of Section  
10 XX (Dispute Resolution), the United States reserves the right to  
11 disapprove of Work performed by a Settling Work Defendant that is  
12 not in compliance with this Consent Decree. Subject to the dis-  
13 pute resolution provisions of Section XX (Dispute Resolution),  
14 the United States also reserves the right to compel a Settling  
15 Work Defendant pursuant to this Decree to perform tasks in addi-  
16 tion to those detailed in the Statement of Work if such tasks are  
17 necessary to meet the requirements that Section VII (Work To Be  
18 Performed) imposes upon that Settling Work Defendant.

19 C. The United States reserves the right to undertake  
20 remedial design and remedial actions, including operation and  
21 maintenance activities (including any operation and maintenance  
22 activities which are not part of the Work), at any time and to  
23 seek to recover all costs of those actions from Settling Defen-  
24 dants; provided, however, that the United States agrees not to  
25 attempt to recover the costs of performing the tasks described in  
26 Subpart B of Section VII (Work To Be Performed) from the City if  
27 the City is in full compliance with the terms of this Decree or

1 from Weber if Weber is in full compliance with the terms of this  
2 Decree. The United States agrees not to undertake any part of  
3 the Work unless (1) the Settling Work Defendant responsible for  
4 that part of the Work fails to perform in an adequate and timely  
5 manner any Work for which it is responsible or (2) EPA, pursuant  
6 to Subpart D of Section XVIII (Covenant Not To Sue), determines  
7 that performance of any additional remedial action tasks related  
8 to the Work (including identification of a new or changed ap-  
9 plicable or relevant and appropriate requirement pursuant to Sub-  
10 part M.2 of Section VII (Work To Be Performed)) are required and  
11 Settling Defendants do not agree to perform these additional  
12 tasks.

13 D.1. The Settling Parties recognize and acknowledge that  
14 the settlement embodied in this Consent Decree may result only in  
15 a partial remediation of conditions at the Site and will result  
16 only in partial implementation of the ROD (as modified by the ESD  
17 and Subpart F of Section VII (Work To Be Performed)). The Set-  
18 tling Defendants hereby waive the defenses of res judicata, col-  
19 lateral estoppel, and claim-splitting against the United States,  
20 but only with respect to the United States' right to pursue sub-  
21 sequent action regarding Settling Defendants' responsibility to  
22 pay for or perform response actions with respect to groundwater  
23 and soil contamination in the San Fernando Valley; provided,  
24 however, that this waiver shall not affect the enforceability of  
25 the covenants not to sue set forth in Section XVIII (Covenant Not  
26 To Sue). The United States hereby retains all of its information  
27 gathering and inspection rights and authorities under CERCLA, the

1 Resource Conservation and Recovery Act ("RCRA"), and any other  
2 applicable statute or regulation. Except as specifically  
3 provided in Section XVIII (Covenant Not To Sue) and Subpart C of  
4 this Section, EPA hereby reserves the right to take any addi-  
5 tional response actions, including any enforcement action, pur-  
6 suant to CERCLA, RCRA, and any other applicable statute or  
7 regulation (including the right to take enforcement action seek-  
8 ing to have Settling Defendants pay response costs for or perform  
9 any response actions that are not Covered Matters (including any  
10 tasks necessary to implement the ROD, as modified by the ESD and  
11 Subpart F of Section VII (Work To Be Performed), that are not  
12 part of the Work).

13 2. The Settling Parties recognize that this Decree does not  
14 cover all of the tasks necessary to implement the ROD (as  
15 modified by the ESD and Subpart F of Section VII)). EPA  
16 presently intends to seek to have these additional tasks per-  
17 formed through enforcement actions or judicial settlements with  
18 potentially responsible parties ("PRPs"). These PRPs may include  
19 the Settling Defendants, pursuant to the reservation of EPA's en-  
20 forcement authority in Subparts C and/or D of this Section;  
21 provided, however, that the United States agrees not to take an  
22 enforcement action for the performance of or to recover the costs  
23 of the tasks described in Subpart B of Section VII (Work To Be  
24 Performed) against the City if the City is in full compliance  
25 with the terms of this Decree or against Weber if Weber is in  
26 full compliance with the terms of this Decree.

27

1       E. Settling Defendants reserve any and all defenses or  
2 rights they may have with respect to any actions concerning the  
3 Site, including any enforcement action by EPA pursuant to Subpart  
4 D of this Section, except any rights expressly waived in this  
5 Decree. Settling Defendants retain any and all rights, claims,  
6 remedies and defenses that they have or may have against any per-  
7 son, or entity, including potentially responsible parties, not  
8 expressly waived in this Decree, including any rights, claims,  
9 remedies and defenses they may have as against each other. This  
10 reservation shall not affect each Settling Defendant's obligation  
11 to perform its obligations under this Decree, and shall not af-  
12 fect EPA's ability to assess stipulated penalties in accordance  
13 with Section XIX (Stipulated Penalties).

14       F. Settling Defendants waive any rights they might have to  
15 challenge the United States' or the Court's authority to issue,  
16 enter into or enforce this Decree.

17       G. Settling Defendants waive any claims for damages or  
18 reimbursement from the United States, or for set-off of any pay-  
19 ments made or to be made to the United States, arising from or on  
20 account of any contract, agreement, or arrangement between  
21 Lockheed and/or the City and any person for performance of the  
22 Work on or relating to the Site, including claims on account of  
23 construction delays; provided, however, that nothing in this Con-  
24 sent Decree shall be interpreted as waiving, abrogating or  
25 resolving (1) any claims which any Settling Defendant has or may  
26 have based upon any alleged liability which the United States  
27 Department of Defense, any branch or division thereof, or any

1 predecessor agency has or may have for conditions at the Site  
2 pursuant to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C.  
3 §§ 9606, 9607, 9613, 9620, or 9659 or the Resource Conservation  
4 and Recovery Act ("RCRA") Section 7002, 42 U.S.C. § 6972 or (2)  
5 any claims which Lockheed or Weber have or may have with respect  
6 to the Site pursuant to any contract between Lockheed or Weber  
7 and the United States or between Lockheed or Weber and any  
8 government contractor(s). In agreeing to this reservation the  
9 United States does not admit liability for any such claims and  
10 expressly reserves any and all defenses it may have to any such  
11 claims. Nothing in this Consent Decree shall be interpreted as  
12 waiving, abrogating or resolving any rights or claims which  
13 Lockheed or Weber may have against the United States based upon  
14 any contract between Lockheed or Weber and the United States or  
15 between Lockheed or Weber and any government contractor(s).

16 H. Settling Defendants waive any rights they might other-  
17 wise have to initiate a challenge to the amount of stipulated  
18 penalties due per type of violation as set out in Subpart D or E  
19 of Section XIX (Stipulated Penalties) of this Decree. This  
20 waiver does not including a waiver of the right to dispute the  
21 underlying technical or schedule issues that may have given rise  
22 to the alleged penalties or whether the penalties allegedly due  
23 were calculated in the manner provided for in this Decree.

24 I. The Settling Parties recognize that as a result of the  
25 withdrawal of groundwater from the San Fernando Valley Basin  
26 during the performance of the Remedial Action Work, certain  
27 obligations to provide replacement water or to pay money in place

1 of providing such water will arise, pursuant to the final judg-  
2 ment entered in The City of Los Angeles v. The City of San Fer-  
3 nando, et. al., (Los Angeles Superior Court, Case No C650079,  
4 1979). The Settling Parties agree that the City is responsible  
5 for meeting any such obligations to provide replacement water or  
6 to pay money in place of providing such water which arise under  
7 such judgment as a result of performance of the Remedial Action  
8 Work except that Lockheed is responsible for meeting any such  
9 obligations which arise under such judgment in connection with  
10 any water extracted pursuant to this Decree that the City is not  
11 required to accept at the Point of Delivery.

12 XVIII. COVENANT NOT TO SUE

13 A. 1. Except as provided in Subparts C, D, E and F of this  
14 Section, upon approval by EPA of the Certificate of Completion  
15 with respect to the Work pursuant to Subpart A of Section XXXIV  
16 (Termination and Satisfaction), the United States covenants not  
17 to sue the Settling Work Defendants with regard to Covered Mat-  
18 ters. This Section is not, and shall not be construed as, a  
19 covenant not to sue either Settling Work Defendant if either or  
20 both Settling Work Defendant(s) do(es) not make all payments and  
21 perform all Work which Settling Work Defendants are required to  
22 make or perform by this Consent Decree. Neither Settling Work  
23 Defendant is entitled to a covenant not to sue if the other Set-  
24 tling Work Defendant fails to perform its obligations pursuant to  
25 this Decree. This covenant not to sue does not apply to any  
26 removal or remedial actions taken at the Site beyond those that  
27 are included in Covered Matters.

1           2. Except as provided in Subparts C, D, and E of this Sec-  
2 tion, upon fulfillment of Weber's obligations pursuant to Sub-  
3 parts D through F of Section XII (Financial Assurance and Trust  
4 Account), the United States covenants not to sue Weber with  
5 respect to Covered Matters and not to sue Weber to attempt to  
6 have Weber perform the tasks described in Subpart B of Section  
7 VII (Work To Be Performed) if Weber is in full compliance with  
8 the terms of this Decree.

9           3. Except as provided in Subparts C, D, E and F of this  
10 Section, upon entry of this Decree, the United States covenants  
11 not to sue the City to attempt to have the City perform the tasks  
12 described in Subpart B of Section VII (Work To Be Performed) if  
13 the City is in full compliance with the terms of this Decree.

14           B. Settling Defendants hereby release and covenant not to  
15 sue the United States for any claim, counter-claim, or cross-  
16 claim asserted, or that could have been asserted up to and in-  
17 cluding the effective date of this Consent Decree related to or  
18 arising from this Consent Decree or groundwater contamination at  
19 the Site; provided, however, that nothing in this Consent Decree  
20 shall be interpreted as waiving, abrogating or resolving (1) any  
21 claims which any Settling Defendant has or may have based upon  
22 any alleged liability which the United States Department of  
23 Defense, any branch or division thereof, or any predecessor  
24 agency has or may have for conditions at the Site pursuant to  
25 CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,  
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972  
27 or (2) any claims which Lockheed or Weber has or may have with

1 respect to the Site from the United States pursuant to any con-  
2 tract between Lockheed or Weber and the United States or between  
3 Lockheed or Weber and any government contractor(s). In agreeing  
4 to this reservation the United States does not admit liability on  
5 any such claims and expressly reserves any and all defenses that  
6 it may have to any such claims. Except as expressly set forth in  
7 this Decree, Settling Defendants do not waive any claim against  
8 and do not release or covenant not to sue the United States with  
9 respect to any matter.

10 C. Settling Defendants are expressly not released from, and  
11 the provisions of Subpart A of this Section shall not apply to,  
12 any matter not expressly addressed by this Consent Decree, in-  
13 cluding, but not limited to the following claims:

14 1. Claims based on a failure of a Settling Defendant  
15 to meet the requirements of this Decree;

16 2. Any other claims of the United States for any other  
17 costs or actions necessary at the Site which are not Covered  
18 Matters, including any remedial activities that are necessary to  
19 implement the ROD (as modified by the ESD and Subpart F of Sec-  
20 tion VII (Work To Be Performed)), other than the Work, except in-  
21sofar as Weber and the City are entitled to a covenant not to  
22 sue, pursuant to Subpart A of this Section, for the tasks  
23 described in Subpart B of Section VII (Work To Be Performed);

24 3. Claims based on liability of Lockheed, Weber and/or  
25 the City arising from the past, present, or future disposal of  
26 hazardous substances outside of the Site;



1           4. Any claim or demand for damage to federal property  
2 located any place that the Work is being performed;

3           5. Claims based on criminal liability;

4           6. Claims based on liability for damage to natural  
5 resources as defined in CERCLA;

6           7. Claims based on liability for hazardous substances  
7 removed from the Site;

8           8. Claims for Future Response Costs (and interest  
9 thereon) that become due and payable pursuant to Section XVI  
10 (Reimbursement of Future Response Costs) of this Consent Decree,  
11 but which Lockheed does not pay by the date any such amounts are  
12 due;

13           9. Claims based on liability for future monitoring,  
14 oversight, or other response costs incurred by the United States  
15 except as those expenses are Covered Matters; or

16           10. Liability for any violations of federal or State  
17 law which occur during performance of the Work.

18           D. Notwithstanding any other provisions of this Consent  
19 Decree, the United States reserves the right to institute  
20 proceedings in this action, or in a new action, or to issue an  
21 Order seeking to compel Lockheed and/or the City and/or Weber to  
22 perform the following tasks with respect to Covered Matters:

23           1. Perform any additional response work, including  
24 changes in the Work, at or related to the Site; or  
25  
26  
27

2. Reimburse the United States for response costs and reimburse the State for its matching share of any response actions undertaken under CERCLA with respect to Covered Matters, relating to the Site, if:

a. for proceedings prior to EPA certification of completion of the Work pursuant to Section XXXIV (Termination and Satisfaction),

i. conditions at the Site, previously unknown to the United States, are discovered after the entry of this Decree, or

ii. information is received, in whole or in part, after entry of this Decree, and these previously unknown conditions or this information indicates that the Remedial Action previously selected by EPA is not protective of human health and the environment;

b. for proceedings subsequent to EPA certification of completion of the Work pursuant to Section XXXIV (Termination and Satisfaction),

i. conditions at the Site, previously unknown to the United States, are discovered after the certification of completion by EPA, or

ii. information is received, in whole or in part, after the certification of completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action previously selected by EPA is not protective of human health and the environment.

1        E.1.a. The reservation contained in Subpart D of this Sec-  
2 tion pertains only to additional tasks related to the Work. The  
3 United States does not have to meet the standards contained in  
4 Subpart D to seek to have Lockheed perform additional tasks that  
5 are excluded from the definition of the Work. Lockheed retains  
6 any and all defenses to an action by EPA to have Lockheed perform  
7 additional tasks not required by this Decree except those  
8 defenses waived in Subpart D.1 of Section XVII (Reservation and  
9 Waiver of Rights).

10        b. The reservation contained in Subpart D of this Section  
11 pertains only to additional tasks related to the Work. The  
12 United States does not have to meet the standards contained in  
13 Subpart D to seek to have Weber perform additional tasks that are  
14 excluded from the definition of the Work; provided, however, that  
15 EPA agrees not to seek to have Weber perform the tasks described  
16 in Subpart B of Section VII if Weber has a covenant not to sue  
17 for those tasks, pursuant to Subpart A.2 of this Section. Weber  
18 retains any and all defenses to an action by EPA to have Weber  
19 perform additional tasks not required by this Decree except those  
20 defenses waived in Subpart D.1 of Section XVII (Reservation and  
21 Waiver of Rights).

22        c. The reservation contained in Subpart D of this Section  
23 pertains only to additional tasks related to the Work. The  
24 United States does not have to meet the standards contained in  
25 Subpart D to seek to have the City perform additional tasks that  
26 are excluded from the definition of the Work; provided, however,  
27 that EPA agrees not to seek to have the City perform the tasks

1 described in Subpart B of Section VII if the City has a covenant  
2 not to sue for those tasks, pursuant to Subpart A.3 of this Sec-  
3 tion. The City retains any and all defenses to an action by EPA  
4 to have the City perform additional tasks not required by this  
5 Decree except those defenses waived in Subpart D.1 of Section  
6 XVII (Reservation and Waiver of Rights).

7 2. If the United States institutes proceedings in this ac-  
8 tion or in a new action or issues an order pursuant to the reser-  
9 vation contained in Subpart D of this Section, each Settling  
10 Defendant reserves any and all defenses it may have to any por-  
11 tion of such action or order that requires a Settling Defendant  
12 to perform tasks in addition to any portion of the Work which  
13 that Settling Defendant agreed to perform in Section VII (Work To  
14 Be Performed) of this Decree.

15 F. Notwithstanding any other provision in this Consent  
16 Decree, this covenant not to sue shall not relieve Settling  
17 Defendants of their obligations to meet and maintain compliance  
18 with the requirements set forth in this Consent Decree. The  
19 United States reserves all its rights to take response actions at  
20 the Site with respect to the Work in the event that EPA deter-  
21 mines that a Settling Work Defendant has failed to perform, in an  
22 adequate and timely manner, the Work it is required to perform  
23 pursuant to this Decree, and to seek to recover from that Set-  
24 tling Work Defendant response costs which:

- 25 1. Result from such a breach of the Decree;
- 26 2. Relate to any portion of the Work funded or per-
- 27 formed by the United States; or